

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint	)	SUMMARY OF FACTS
Against Progressive Missoula	)	AND
and Allison Handler	)	STATEMENT OF FINDINGS

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Warren Little filed a complaint with the Commissioner of Political Practices alleging that Progressive Missoula, a political committee, and Allison Handler, a 2001 candidate for the Missoula City Council, violated Montana campaign finance and practices laws. The complaint sets forth four claims.

Claim 1

The complaint alleges that Progressive Missoula was not an independent political committee but was instead a principal campaign committee.

Claim 2

The complaint alleges that Allison Handler and Progressive Missoula worked in coordination to design and distribute a campaign flyer opposing Allison Handler's opponent in the election.

Claim 3

The complaint alleges that a campaign flyer produced and distributed by Progressive Missoula did not include in its disclaimer the name and address of the political committee's treasurer.

Claim 4

The complaint alleges that Progressive Missoula failed to report the candidates or ballot issues its expenditures were intended to benefit.

SUMMARY OF FACTS

1. Allison Handler (Handler) was a candidate for the Missoula City Council in the 2001 election, running in Missoula's Ward 2. Although the office for which she filed is

non-partisan, based on her political philosophy Handler considered herself a “progressive” candidate. Her opponent in the election was Anne Kazmierczak. The general election was held on Tuesday, November 6, 2001. Kazmierczak defeated Handler in the election.

2. Progressive Missoula (PM) is a political committee that was organized in August, 1999. According to a written “statement of organization” prepared by its organizers, PM was organized “as an independent political committee with the primary purpose of supporting endorsed candidates and issues” and a secondary purpose of “recruiting and educating potential candidates and of shaping issues as they move toward political resolution.”

3. On September 17, 1999, PM filed a Statement of Organization (form C-2) with the Office of the Commissioner of Political Practices (Commissioner), naming Douglas Campbell as the treasurer and Carson Strege-Flora as an additional officer of the committee. PM represented on the C-2 that it is “an independent political committee which has, this election cycle, endorsed four candidates and one ballot issue” in the November, 1999 local election. The C-2 listed four candidates that PM supported in the 1999 local Missoula election (Naomi DeMarinis, Lois Herbig, Jim McGrath, and John Torma) and one ballot issue that PM supported (Missoula Living Wage Ordinance Ballot Initiative). Based on the information provided by PM in its C-2, the Commissioner classified PM as an independent political committee.

4. PM established an “Executive Committee” and four members served on it during each of calendar years 1999, 2000, and 2001. In 2001 the members of this Committee were Doug Campbell, John Fletcher, Jim Fleischmann, and G.G. Weix.

5. According to PM’s bylaws, the functions of its Executive Committee included establishment and implementation of policy, preparation and submission of a budget, and recruitment of an “endorsement committee,” which would consider which candidates and/or issues PM should endorse. John Fletcher, in response to questions

posed during this investigation, stated that no endorsement committee was ever formed by PM, and that the Executive Committee decided which candidates and/or issues PM would endorse.

6. Sometime in 2000, Jim Parker, Pete Talbot, and Jeffrey Smith formed “WestRidge Creative,” a communications company located in Missoula.

7. Handler did not have a paid campaign staff, but she had a number of campaign volunteers, including members of the Missoula New Party, the Democratic Party, the Glacial Lake Missoula Greens, Jim Fleischmann, John Fletcher, Jim Parker, Pete Talbot, and James Musumeci. Handler’s campaign treasurer was Leslie Wood.

8. During the course of her campaign, Handler periodically sent emails to various people on an email address list, including Fleischmann, Fletcher, and Parker, because she wanted to keep her campaign volunteers, supporters, and other interested parties informed of her campaign activities.

9. When she was running for the Missoula City Council, Handler was aware that PM was a political committee formed to support the election of progressive candidates. She knew that Fletcher and Fleischmann were involved with PM; and she was aware that PM’s past activities had included distribution of campaign literature.

10. Handler contends that she never sent any letters, memoranda, emails, or other correspondence or documents to PM while she was running for office. She also stated, in response to the complaint:

Neither I nor my campaign made any decisions about Progressive Missoula or its political activities or published materials, nor did we coordinate with Progressive Missoula. Neither I nor my campaign produced or distributed their literature. Progressive Missoula is an independent committee of whose actual membership and campaign activities I remained unaware [sic] until I read the enclosures accompanying your letter.<sup>1</sup>

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<sup>1</sup> The “enclosures” referred to in the Handler response are copies of the complaint and its attachments, which were provided to Handler by the Commissioner’s office.

11. During Handler's campaign Fletcher and Fleischmann provided strategic advice and input. For example, Fleischmann responded as follows to a September 5, 2001 email from Handler regarding a candidate forum that she planned to attend:

Right on, Allison. I think that your instincts on the forum -- and your ideas for specific questions to ask as well as a suggested attitude of incredulity [sic] -- are right on target . . .

In a September 7, 2001 email to Handler and some of her supporters, Fletcher wrote:

I don't think a response to AnneK's anti-Allison piece is necessary now. The pool of primary election voters is generally small, practiced & savvy . . . and more likely to view the piece as disqualifying Anne. Allison's November opponent might (indirectly, of course) resurrect these rumors, so it might seem worthwhile in October to address them then.

12. Other emails and documents establish that Fletcher, Fleischmann, and Parker were heavily involved in various aspects of Handler's campaign. A July 2, 2001 email from Handler requests that Fleischmann assist with a campaign literature drop during the weekend of July 14-15, 2001. An August 24, 2001 email from Handler suggests that Fletcher and Parker could develop some persuasive material to be used in campaign phone calls. A September 19, 2001 email from Handler suggests that Fleischmann could write a letter to the editor of the Missoulian in support of Handler. An October 3, 2001 memorandum written by Fletcher states that the Handler campaign assigned to him the task of identifying additional people who were willing to support or endorse Handler's candidacy.

13. A September 14, 2001 email from Fletcher to Handler and several of her campaign supporters begins with a discussion and analysis of the results of the primary election, which was won by Handler.<sup>2</sup> The last portion of the email discusses the possibility of obtaining the endorsement of Missoula Mayor Mike Kadas and proposes some campaign strategy. The last line of the email states:

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<sup>2</sup> Five candidates ran in the September, 2001 Missoula city primary election for Ward 2, with the top two finishers (Handler and Kazmierczak) proceeding to the November general election.

[I've got some "dirty tricks" ideas, but you don't want to hear about them. That's why we have PM.] (Language is bracketed in original).

Other emails written by Fletcher establish that "PM" is his abbreviation for Progressive Missoula.

14. In an October 10, 2001 email from Handler to several campaign supporters, including Fletcher, Handler suggested a "pre-emptive" piece of campaign literature stating, among other things that, while a large percentage of Handler's support came from neighborhood donors, Kazmierczak's financial support came from "developers and builders."

15. In an October 10, 2001 email to Handler, with copies to Handler campaign supporters, Fleischmann wrote:

Allison, I've been thinking a lot about what I'm about to say so here it is: I think we should go negative. Anne is bashing you right and left and we haven't taken the gloves off. I'm interested in feedback from others but I'll be hard to convince that we should somehow stay in the rarified air of positive campaigning. I have some ideas about how to do it and would love to discuss them. Anne's got a lot of negatives and if we don't bring them out, they won't be brought out.

16. After receiving several responses to his October 10 email, Fleischmann wrote the following email on October 11, 2001:

I hate to sound like Attila the Hun, but negative is negative. We don't want to debate Anne on the issues -- she has none. We want to show the contrast in CHARACTER and the only way to do that is to hit her on her negative campaigning, her support from developers outside the ward, etc.

17. On October 12, 2001, Handler sent an email to Fleischmann, Fletcher, and Parker, among others, stating:

Here's what I think: I'd like to keep my nose clean. I'd like NOT to do a comparison piece unless it can be clean. I'm not sure how that would work. I'd love to be humorous but I'm not a very funny person and it might come off as forced. It would have to be extremely careful. So far the suggestion I like is a LTE<sup>3</sup> "taking off the gloves on my behalf." I'd like our campaign to be about kids on bikes, brightly colored balloons, . . . door-

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<sup>3</sup> "LTE" refers to a letter to the editor.

knocking and being very positive about what we stand for, . . . . Anyone who wants to take the gloves off on my behalf is more than welcome.

18. On October 12, 2001, Handler sent another email to Fletcher, Fleischmann, Parker, and others. The email discussed “occupancy standards” that Handler opposed but that were apparently supported by her opponent, Kazmierczak:

I disagree on one count: housing and neighborhood revitalization. Anne is in favor of the newly proposed, so-called “occupancy standards,” which would preclude more than 3 people unrelated by blood or marriage from co-habiting -- discriminatory, as you well know, against students, low-income people, cooperative-housing and co-housing situations, etc. The “Golden Girls” couldn’t live in Missoula.

19. An October 30, 2001 email from Jeffrey Smith of WestRidge Creative, sent to Fleischmann, with a copy to Fletcher, contained the subject line: “Golden Girls ad.” The text of the email stated: “Another draft. Check out the language. It’s close but needs help.” The email referenced an attachment named “golden girls ad2.jpg;” however, the attachment has not been located.

20. During this investigation, Fleischmann stated he did not specifically recall a “Golden Girls” ad. He speculated perhaps WestRidge Creative had prepared an ad along those lines, but that PM had rejected it.

21. Fletcher was unable to locate the “Golden Girls” email or its attachment on his computer, but he did recall discussing with WestRidge Creative the possibility of preparing and running such an ad for PM. According to Fletcher PM decided to focus on two other issues in the ad: casinos and land development. One of the ads that Fletcher proposed to WestRidge Creative included a photo of casinos, and the other ad concerned land use development.

22. Jim Parker of WestRidge Creative was unable to locate a “Golden Girls” ad in WestRidge Creative’s records. Parker recalled that Fletcher had brought in two ads that he requested WestRidge Creative to complete prior to the November election. One ad portrayed three older women leaving a building in which they had resided. Although

he could not specifically recall the gist of the ad, Parker speculated that it may have been about three unrelated women being evicted from their building as a result of occupancy standards. Parker stated the other ad proposed by Fletcher depicted a bundle of cash and concerned growth and development issues.

23. G.G. Weix, another member of PM's Executive Committee, recalled that WestRidge Creative prepared two ads for PM. One ad depicted the Golden Girls, and the message of the ad was that they could not afford to live in their house. The other ad showed a bundle of cash and discussed acceptance by Kazmierczak of contributions from "casino interests and developers."

24. On October 18, 2001, Handler sent an email to many of her campaign supporters, including Fletcher, Fleischmann, and Parker, listing a number of campaign-related tasks that had to be performed. Under the heading "November 5<sup>th</sup> and E-Day stuff" she wrote:

. . .

2. Final lit drop(s). If we want to continue to keep our hands clean, there may be a way to do a negative piece on Anne through Progressive Missoula -- they do a piece, not paid for or coming from the Handler campaign at all. Our final piece can be completely positive. Another option -- we drop a comparative negative piece (some of you have seen the version I drafted) on Saturday, and a final piece on Monday night that's positive and doesn't mention Anne at all. . . .

NEEDED: decisions on how/when to proceed, volunteers organized for two drops, possibly three (if PM does a piece and organizes it separately from the Handler piece(s)) on that final weekend and Monday night.

25. On October 19, 2001, Fletcher wrote an email to Handler in response to her October 18 email. The subject heading of the email was "Ever security-conscious":

I recommend we stop broadcasting the Handler campaign's "internal" communications. There's no need for everyone on some list with who-knows-what distribution ("To:<Undisclosed-Recipient:>") to learn tactical details such as those disclosed below [Fletcher copied Handler's October 18 email into this email]

Fletcher signed his email "Ever security-conscious, John."

26. In an October 19, 2001 memo from Fletcher to WestRidge Creative, Fletcher wrote that he had had a telephone conversation with Parker about preparation and placement of a political advertisement in the Sunday, November 4, 2001 edition of the Missoulian. According to the memo, the proposed ad was intended to “expose examples of the (lawful) private interests who -- for the benefit of corporate and commercial self-interest? -- purchase potential influence in our government through funding candidate campaigns.” The plan was to direct the ad at the campaign of Handler’s opponent in the election, Kazmierczak, as an “example of how corrupting interests purchase influence.” The memo from Fletcher included the following statements:

Underlying and implicit intentions of the ad are for Progressive Missoula to relieve a candidate campaign of the risks of placing a “negative” ad by doing so itself . . . and for PM to accomplish this objective (an effective “negative” ad) in a manner which appeals to the sensibilities of current and future donors by projecting an appropriate image of PM itself: that we’re an oh-so-high-minded PAC wishing to maintain an abiding presence in Missoula politics by informing the public without engaging in the low blows which characterize other PACs . . . .

27. Fletcher wrote a letter to Handler asserting that Handler’s October 18, 2001 email was inappropriate. The letter, which was dated October 19, 2001, began: “Please accept this letter -- and its reproachful tone -- as a formal reproof.” The letter stated that Fletcher wrote “as a member of Progressive Missoula’s 2001 Executive Committee.” The letter expressed “shock and surprise” at the content of Handler’s October 18 email, in which she suggested that PM could do a negative campaign piece on Kazmierczak (see Fact 24). The letter also stated:

Progressive Missoula is an independent political committee. It has no interest in your personal efforts to win election and it has no interest in the activity of the Handler for City Council campaign committee. While you are certainly free to speculate about Progressive Missoula and its potential engagement in the coming election, I feel your reference to us in an email addressed to your campaign supporters is inappropriate and fails to show respect for our independence. To put it bluntly, **what Progressive**



***Missoula does or doesn't do is none of your business.*** (Emphasis in original).

During this investigation Fletcher could not recall when he wrote the letter, but he admitted that he may have “back-dated” the letter; i.e., he may have written the letter some time after October 19, 2001.

28. Pursuant to PM's direction, WestRidge Creative prepared the ad that PM intended to have published in the Sunday, November 4, 2001 Missoulain. The ad contained a photo of what appears to be a large amount of cash enclosed by a pair of hands. The text of the ad reads as follows:

WARD 2 VOTERS: When they come asking our City Council for a zoning variance for new casinos in your neighborhood . . . How will Ms. Kazmierczak vote? Ms. Kazmierczak says she wants to represent Ward 2 residents. If that's so, why have more than 70% of her campaign contributions come from outside Ward 2, many of them from casino interests and developers? And why did the Republican Party give her a hefty contribution? On Tuesday, make your vote count for the neighborhood. Ask yourself which candidate is supported by wealthy special interests (who will inevitably want a return on their investment) . . . and which candidate has worked hard for smart growth, affordable housing, healthy neighborhoods, living wage jobs and a better future for Missoula.

Paid for by Progressive Missoula • P.O. Box 8381 • Missoula, MT 59807

29. An October 21, 2001 email from Fletcher to Fleischmann and other members of PM's Executive Committee discussed plans for running the campaign ad prepared by WestRidge Creative in the Sunday, November 4, 2001 Missoulain. The email also discussed the possibility of making photocopies of the Missoulain ad for distribution in the Ward 2 neighborhood on Monday, November 5, 2001.

30. Pursuant to an October 27, 2001 email sent to Fletcher and others, Handler scheduled a campaign meeting at her house on Sunday, October 28, 2001. On October 29, 2001, Fletcher wrote an email to Handler, stating:

I wasn't able to make the Sunday meeting, Allison. Sorry. Are we still dated up for another walk beginning Thursday at 5pm? PM's “negatives”

get firmed up today. I'll report in. Great letters in today's Missoulian. John.

On October 29, 2001, Handler emailed the following response to Fletcher: "yup. See you at my place between 5 and 5:15. Allison."

31. On October 31, 2001, Fletcher emailed the following to Handler:

Best wishes in today's Missoulian interview. Don't let AMK get to you; this'll all be over in less than a week now. And stay positive! [Let others get negative, counter-negative, anti-counter-negative, etc. . . .]

32. In an emailed response to Fletcher, Handler wrote the following:

Well, John, I kept my head during the interview session but as you are well aware by now, Anne has managed to get her hands on a campaign e-mail (alas, the one that David innocently and with the best of intentions posted to the Greens listserv in unedited form, that mentioned PM) and now knows our final week strategy. . . .

The campaign email to which Handler was referring is the October 18, 2001 email described in Fact 24, which suggested that PM could do a negative piece on Kazmierczak. The Handler campaign first learned that the October 18, 2001 email had been distributed beyond its intended recipients on the morning of October 31, 2001. At that time, during a candidate forum sponsored by the Missoulian, Kazmierczak distributed a copy of the email to the press.

33. On October 31, 2001, Fletcher sent an email to Fleischmann, Weix, and Campbell, stating:

As you all may already know, internal miscommunications within the Handler campaign resulted in Kazmierczak this morning . . . handing out an email purporting the Handler campaign committee and the Progressive Missoula political committee were illegally colluding. So we seem to be on the horns of a dilemma: if we proceed with our "negative" ads, it lends substance to Kazmierczak's charges and could have counterproductive effect; if we don't proceed, Kazmierczak's dirty laundry goes unchallenged. [I've read the 10/18/01 email . . . and it's not particularly damning, but it presents Allison's own words about PM doing things which would appear to benefit her campaign . . . and her words are in a context of her own campaign's tactical planning.]

Fletcher concluded his email by recommending that PM not run the negative ad in the Sunday Missoulian.

34. The members of PM's Executive Committee exchanged additional emails discussing potential ramifications of the disclosure of the email, and possible courses of action. The debate regarding whether PM should go ahead with the planned negative ad in the Sunday, November 4, 2001 Missoulian continued. In an October 31, 2001 email sent to Weix, Campbell, and Fletcher, Fleischmann stated:

I believe that Allison's email does not show collusion between her campaign and PM. What it shows is that she is misinformed and doesn't realize that there is a prohibition against collusion, which PM is well aware of. Therefore, her email is speculative and offers only her view that "there might be a possibility" that PM could engage in specific action.

I'm leaning towards running the ads. I also think we should write a letter to Allison, stating that she speculated about our running ads that would portray her opponent negatively, and inform her that while we support her position on issues that are important to us, the use of our money will be decided solely by PM and not in conjunction or collusion with any candidate's campaign.

35. PM ultimately decided not to run the planned ad in the Sunday, November 4, 2001 Missoulian. Instead, PM contracted with James Musumeci to distribute campaign flyers in three precincts in Ward 2, consisting of photocopies of the ad that would have appeared in the Missoulian. Musumeci was also paid to place "get out the vote" telephone calls to University of Montana students. The contract between PM and Musumeci provided:

Any literature distributed to the public which appears to advance positions developed by PROGRESSIVE MISSOULA shall include the statement "prepared and paid for by PROGRESSIVE MISSOULA, PO Box 8381, Missoula, MT 59807."

36. Musumeci performed the services pursuant to the contract with PM, distributing flyers and making phone calls. The design, layout, and content of the flyers distributed in Ward 2 by Musumeci are identical to the campaign ad prepared by WestRidge Creative, which PM originally intended to have published in the Missoulian several days prior to the election. (Described in Fact 28).

37. Members of PM's Executive Committee admitted the flyer designed and distributed by PM did not list the name and address of PM's treasurer, Doug Campbell, but stated that the omission was an oversight.

38. PM filed a campaign finance report with the Commissioner's office on October 24, 2001, covering the period January 1 through October 25, 2001. In its report PM reported no contributions, no expenditures, and a carryover balance of \$383 in the bank.

39. On November 16, 2001, PM filed a campaign finance report with the Commissioner, covering the period October 26 through November 14, 2001. PM reported contributions of \$1,750 and expenditures of \$1,425 during the reporting period. The two expenditures reported were: \$550 to James Musumeci for "contracted services" and \$875 to WestRidge Creative for "professional services." PM's report does not disclose the name of any candidates that its expenditures were intended to benefit, and it does not state that its expenditures were independent.

40. On December 27, 2001, PM filed a campaign finance report with the Commissioner, covering the period November 15 through December 31, 2001. PM reported contributions of \$150 and no expenditures during the reporting period.

41. On May 29, 2002, PM filed an amended C-2 (Statement of Organization).

Under the heading "Purpose of Committee" PM stated:

There may be times when our activity coincides with an election.  
Examples -- all reported to OCPP -- are:

...

2001: We exposed a political force which was investing in candidate(s)  
but did not endorse, support, oppose, etc.

42. Handler's campaign finance reports do not report any direct or in-kind contributions from PM.

## STATEMENT OF FINDINGS

### Claims 1 and 2

Since Claims 1 and 2 involve related issues, both claims will be discussed together. Claim 1 alleges that PM was not an independent political committee but was a principal campaign committee, because during the 2001 Missoula city elections PM's only expenditures were for the benefit of Ward 2 candidate Handler. Claim 2 alleges that PM and the Handler campaign worked in coordination to design and distribute the flyer described in Facts 28 and 35.

Pursuant to ARM 44.10.329, the Commissioner classifies a political committee based on information provided by the committee in its Statement of Organization (C-2). Based on the information provided by PM in its C-2 filed in September, 1999, the Commissioner classified it as an independent political committee. Under ARM 44.10.327(2)(b), an independent committee is defined as:

A political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for the primary purpose of supporting or opposing various candidates and/or issues.

Based on the information provided to the Commissioner by PM when it filed its C-2 in September, 1999, PM was correctly classified as an independent political committee.

There is no evidence that PM was specifically organized in 1999 to support or oppose any particular candidate or issue.

Montana Code Annotated § 13-37-216 also addresses the concept of independent committees. The statute establishes limits on contributions by political committees and individuals (other than the candidate) to a candidate. In 2001, in the case of a candidate for a local public office, such as Handler, the contribution limit was \$100 for each election in a campaign.<sup>4</sup> Montana Code Annotated § 13-37-216(1)(a)(iii). A contribution to a candidate “includes contributions made to the candidate’s committee and to any political committee organized on the candidate’s behalf.” Montana Code Annotated § 13-37-216(1)(b). According to Montana Code Annotated § 13-37-216(2)(a):

A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. (Emphasis added).

Thus, to qualify as an independent committee for purposes of the contribution limits established in the statute, a political committee must meet all of the following criteria:

1. It must not have been specifically organized on behalf of a candidate;
2. It must not be directly or indirectly controlled by a candidate or a candidate’s committee; and
3. It must not act jointly with a candidate or candidate’s committee in making expenditures or accepting contributions.

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<sup>4</sup> In 2003 the Legislature increased this limit to \$130.

As discussed below, a review of the activities of PM in connection with the Handler campaign establishes that PM does not meet criteria 3 above, thus it is not “independent of the candidate.”

The terms “contribution” and “expenditure” are defined in Montana Code Annotated § 13-1-101. A “contribution” is generally defined as “an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election.” Montana Code Annotated § 13-1-101(7)(a). An “expenditure” is “a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.” Montana Code Annotated § 13-1-101(11)(a). The Commissioner’s rules provide additional guidance and specificity regarding the terms. ARM 44.10.321(1)(d) provides that a “contribution” includes an “in-kind contribution” as defined in the rule. ARM 44.10.321(2) defines an “in-kind contribution” as:

the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate . . .

ARM 44.10.321(2)(a)(iv) provides that an in-kind contribution also includes a “coordinated expenditure” as defined in ARM 44.10.323(4).

ARM 44.10.323 defines the terms “independent expenditure” and “coordinated expenditure.” An “independent expenditure” is:

an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee.

According to ARM 44.10.323(3), independent expenditures are required to be reported as provided in ARM 44.10.531. A “coordinated expenditure” is:

an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee.

ARM 44.10.323(4) requires coordinated expenditures to be reported as in-kind contributions as provided in ARM 44.10.511 and 44.10.513.

Applying these definitions, it is clear that PM's expenditures for ads or flyers opposing candidate Kazmierczak were made with the prior knowledge, consent, and encouragement of Handler and her campaign, thus they constitute "coordinated expenditures" that should have been reported as in-kind contributions to the Handler campaign. The following evidence shows that these were coordinated expenditures.

1. Fleischmann and Fletcher, two of the key members of PM, were also Handler campaign volunteers. Handler regularly sent Fleischmann and Fletcher copies of her emails outlining and discussing campaign strategy, and Handler regularly met with Fleischmann and Fletcher to discuss campaign issues. In addition, Fleischmann and Fletcher engaged in numerous campaign activities on Handler's behalf. Facts 7, 8, 11, and 12.

2. Handler was aware that PM was a political committee formed to support "progressive" candidates such as herself. She also knew that Fletcher and Fleischmann were members of PM, and that in past elections PM had engaged in the distribution of campaign literature. Fact 9.

3. In mid-September, 2001, Fletcher sent an email to Handler suggesting, without being specific, that he had some ideas for campaign "dirty tricks" that could be carried out by PM. Fact 13.

4. On October 10, 2001, Handler sent an email to Fletcher suggesting that her campaign distribute campaign literature emphasizing that Kazmierczak's financial support came from developers and builders. Fact 14.

5. Through an exchange of emails in October, 2001, Handler, Fletcher, and Fleischmann discussed the possibility of Handler engaging in "negative" campaigning to



underscore the differences between Handler and Kazmierczak. Handler appeared to reject the concept of her campaign “going negative,” but she stated that “[a]nyone who wants to take the gloves off on my behalf is more than welcome.” Facts 15, 16, and 17.

6. On October 12, 2001, Handler sent an email to Fletcher, Fleischmann, and Parker, among others, discussing the issue of “occupancy standards,” and noting that if such standards were implemented the “Golden Girls” could not live in Missoula. Several weeks later a member of WestRidge Creative corresponded by email with Fleischmann regarding a proposed draft of a “Golden Girls” ad for PM. Other members of PM and WestRidge Creative also recalled a draft of a “Golden Girls” ad. This strongly suggests that Fleischmann was using concepts or suggestions derived from the Handler campaign to propose an ad to be prepared for PM. Facts 18 - 23.

7. On October 18, 2001, Handler sent an email to her supporters, including Fletcher and Fleischmann, suggesting “there may be a way to do a negative piece on Anne through Progressive Missoula . . . .” Fletcher’s first response to the email was to recommend that the Handler campaign be more careful about broadcasting its internal communications regarding campaign strategy. Although Fletcher later sent a letter of “reproval” to Handler, purportedly written on October 19, 2001, it is likely that Fletcher composed and sent the letter much later, and only after it became known that Handler’s October 18 email had been distributed far beyond its intended audience. Facts 24, 25, and 27. The content of the letter, in fact, is remarkably similar to the content of a letter proposed by Fleischmann in his October 31, 2001 email. See Fact 34.

8. While Handler was suggesting that she wanted to keep her campaign positive and upbeat, she encouraged others to “take the gloves off” if they wished to do so. As noted, she even went so far as to propose that PM do a negative ad attacking Kazmierczak. At the same time, PM was proceeding with its plans to place a negative ad in the Missoulian the weekend prior to the election. An email from Fletcher to Handler on October 29, 2001 advised Handler that Progressive Missoula’s negative

advertisements would get “firmed up” on that date. On October 31, Fletcher emailed Handler, stating that she should remain “positive” and “let others get negative.” These emails establish that Handler was well aware of PM’s plans to place an ad in the Missoulian criticizing the source of campaign contributions received by Kazmierczak, and Handler at least tacitly approved of PM’s plans to do so. Facts 17, 24, 26, 28, 29, 30, and 31.

In conclusion, while there is no evidence that PM was specifically organized as a principal campaign committee for the Handler campaign, there is substantial evidence to conclude that PM and the Handler campaign worked collaboratively to prepare and distribute a campaign ad opposing Handler’s opponent, Kazmierczak. The effect of this finding is that PM is considered to be “organized on the candidate’s (Handler’s) behalf.” Montana Code Annotated § 13-37-216(2)(a). Contributions to PM, therefore, are contributions to the Handler campaign. Montana Code Annotated § 13-37-216(1)(b). In addition, pursuant to the Commissioner’s rules the expenditures made by PM are considered “coordinated expenditures” that should have been reported as in-kind contributions from PM to Handler. ARM 44.10.323(4).

A related effect is that contributors exceeded the limits in Montana Code Annotated § 13-37-216. PM received \$1,750 in contributions while Handler was a candidate. Two of the contributors to PM also contributed to the Handler campaign. Bill Chaloupka contributed \$250 to PM and contributed \$200 to the Handler campaign (\$100 for the primary and \$100 for the general). John Fletcher contributed \$1,000 to PM and contributed \$200 to the Handler campaign (\$100 for the primary and \$100 for the general). Chaloupka exceeded the contribution limitation to Handler by \$250, and Fletcher exceeded the contribution limitation to Handler by \$1,000; and since the \$1,425 in expenditures made by PM were in-kind contributions to Handler, PM exceeded the contribution limits to Handler by \$1,325. Montana Code Annotated § 13-37-216(4) states that a candidate may not accept contributions in excess of the limits established

in the statute; thus, the Handler campaign violated subsection (4) of the statute. In addition, the Handler campaign failed to report all of the contributions made to PM as contributions made to Handler, and the Handler campaign failed to report the expenditures made by PM as in-kind contributions from PM to the Handler campaign. This constitutes a violation of Montana Code Annotated § 13-37-229.

### Claim 3

The complaint alleges the flyer distributed by PM did not contain in its disclaimer the name and address of PM's treasurer. In 2001, Montana Code Annotated § 13-35-225 provided:

**Election materials not to be anonymous.** (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1). (Emphasis added).

The ad designed and distributed by PM advocated the defeat of Kazmierczak in the election; therefore, it should have had a disclaimer including the name and address of PM's treasurer, Doug Campbell, and its failure to do so constitutes a violation of the statute.

#### Claim 4

The complaint alleges that PM failed to report the candidates or ballot issues its expenditures were intended to benefit. ARM 44.12.531(4) establishes reporting requirements for those making independent expenditures:

Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures. In addition, a person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent. The candidate or political committee benefiting from the independent expenditure does not have to report the expenditure. (Emphasis added).

PM declared itself to be an independent political committee, and its expenditures were ostensibly independent expenditures that were not coordinated with a candidate. (Facts 2 and 3). PM filed campaign finance reports disclosing its contributions and expenditures, but it did not identify the name of the candidate its expenditures were intended to benefit (Handler); nor did PM disclose that its expenditures were independent; therefore, PM failed to comply with the reporting requirements for independent expenditures set out in ARM 44.10.531.<sup>5</sup>

#### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Progressive Missoula, the individual treasurer and committee members of Progressive Missoula, Allison Handler, and the Allison Handler

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<sup>5</sup> As discussed herein, although I have determined that PM's expenditures were not independent, PM nevertheless had an obligation to properly report its expenditures if it held itself out as an independent political committee.

campaign organization violated Montana campaign finance practices and reporting and disclosure laws and regulations.

Dated this 22nd day of July, 2004.

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Linda L. Vaughey  
Commissioner

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of July, 2004, the foregoing Summary of Facts and Statement of Findings was served on the parties hereto addressed to the parties as follows:

Certified U.S. Mail, Postage Prepaid  
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Mary Baker  
Data and Program Technician  
Commissioner of Political Practices